

Maryland Judicial Ethics Committee

Opinion Request Number: 2019-24

Date of Issue: August 29, 2019

Published Opinion Unpublished Opinion Unpublished Letter of Advice

A Judge may not provide a reference for a former law clerk, or any attorney, on the attorney rating website Avvo.

Issue: May a judge provide a reference for a former law clerk at the former clerk's request on the online attorney rating site Avvo?

Answer: No. The Avvo site is formatted such that any recommendation of an attorney by a judge would unduly lend the prestige of judicial office to the attorney's online profile.

Facts: Requestor is a judge who has been asked by a former law clerk to provide an endorsement of the clerk's legal skills on the online attorney rating site Avvo (link: <https://www.avvo.com>).

The judge asks if obliging would raise ethical concerns.

According to its website, "Avvo is a comprehensive online legal marketplace connecting consumers and lawyers through its online directory, attorney profiles, Q&A forum, reviews, and other features." The site offers search tools that facilitate discovery of attorneys in certain geographic areas and practice specialties. Attorney profiles can include prior employment history, significant cases, and bar affiliations. Each profile may also include client reviews and attorney endorsements.

Avvo, without prior arrangement or consent, provides a database of attorneys nationwide, who may "claim" their profiles by linking to their existing profile and adding certain information without charge.¹ This can include arranging for satisfied client reviews and attorney endorsements that appear with the listings. A cursory review of Avvo profiles for Maryland attorneys did not reveal any anonymous attorney endorsements nor any made by judges.

Avvo also provides numerical attorney ratings calculated on a mathematical model "that considers information the lawyer has included on their profile," in addition to information collected from state bar associations and other legal licensing organizations.² Avvo rates only those attorneys who have claimed their profiles.

¹ For a charge, attorneys can avail themselves of "Avvo Premium," which includes prioritizing their profile in search results.

² Per the Avvo website, www.Avvo.com, "Attorney Ratings explained."

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Requestor has been asked to provide comment for publication in the attorney endorsement section of the former law clerk's Avvo profile. Given the way the Avvo website is structured, the Committee believes that a judge's recommendation would inordinately confer judicial prestige to the endorsed attorney.

Analysis: Maryland Code of Judicial Conduct ("the Code") Title 18 of the Maryland Rules, Rule 18-101.3 states: "A judge shall not lend the prestige of judicial office to advance the personal or economic interests of the judge or others or allow others to do so."

Comment 2 to this rule discusses judicial references:

[2] A judge may provide a reference or recommendation for an individual based upon the judge's personal knowledge. The judge may use an official letterhead if the judge indicates that the reference is personal and if there is no likelihood that the use of the letterhead would reasonably be perceived as an attempt to exert pressure by reason of the judicial office.

In the matter under consideration, the ethics of judicial references intersects with the digital age. It is clear the Code allows a judge to provide a reference for an individual based on personal knowledge and may do so in writing to an interested identified party using judicial stationery in appropriate circumstances. The issue here is whether, in the format of Avvo's website, a judge's endorsement would overstep ethical bounds. For the following reasons, the Committee is persuaded that it would, and that such an endorsement is therefore precluded by the Code.

Avvo is meant for use as a public marketplace by individuals in need of legal help, and by attorneys seeking to promote their services and build their client base. As such, the site offers an online marketing tool for legal practitioners.

While the client review section of an Avvo profile can contain unsolicited and anonymous posts, the attorney endorsements are all solicited and attributed. Thus, the judge's name would have to appear with the endorsement, and his or her title as well. Posting without identifying as a judge would not be an option: the judge's name would likely be recognized by some, leaving the judge open to unwelcome charges of lack of candor.

Given these circumstances, if Requestor's endorsement appears in the former clerk's profile, the fact that it comes from a sitting judge would certainly differentiate it from a typical endorsement in the minds of many Avvo users seeking counsel. This could potentially benefit the judicially promoted attorney to the disadvantage of others. As such, even though the recommendation would be based on personal knowledge, it presents a clear case of lending prestige that allows another to advance his or her economic interests.

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In addition, allowing an attorney to use the endorsement of a sitting judge on Avvo raises concerns of favoritism apart from the attorney's former law clerk status. Rule 18-101.2 states: "A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary." (Emphasis supplied.) Requestor's Avvo endorsement would quite validly invite neutrality challenges from opposing parties and counsel whenever the endorsed attorney represented the adversary in the judge's courtroom.

Lastly, although this Request has been analyzed within the framework of a former law clerk's request for a judicial Avvo endorsement, the Committee's reasoning also applies to such a request by any attorney to any judge. A judge may not confer the prestige of judicial office to an attorney's marketing efforts.

Application: The Judicial Ethics Committee cautions that this Opinion is applicable only prospectively and only to the conduct of the Requestor described herein, to the extent of the Requestor's compliance with this opinion. Omission or misstatement of a material fact in the written request for opinion negates reliance on this Opinion. Additionally, this Opinion should not be considered to be binding indefinitely.

The passage of time may result in amendment to the applicable law and/or developments in the area of judicial ethics generally or in changes of facts that could affect the conclusion of the Committee. If the request for advice involves a continuing course of conduct, the Requestor should keep abreast of developments in the area of judicial ethics and, in the event of a change in that area or a change in facts, submit an updated request to the Committee.